

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 11917 of 2015

Applicant

**KORDAMENTHA PTY LTD (ACN 100 169 391)  
AS TRUSTEE FOR THE LM MANAGED  
PERFORMANCE FUND**

AND

Respondent

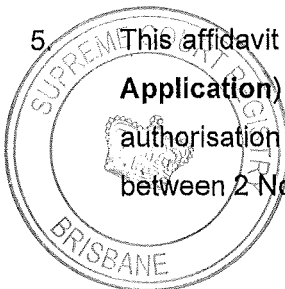
**THE MEMBERS OF THE LM MANAGED  
PERFORMANCE FUND**

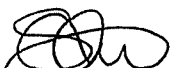
**AFFIDAVIT OF STACEY CLISBY**

**AFFIRMED ON: 17 DECEMBER 2021**

I, **STACEY CLISBY** of Level 14, 12 Creek Street, Brisbane in the State of Queensland, chartered accountant, affirm:

1. I am a Director and authorised officer of KordaMentha, the accounting firm, under which name KordaMentha Pty Ltd trades.
2. KordaMentha Pty Ltd is the trustee (**Trustee**) of the LM Managed Performance Fund (**MPF**).
3. I am duly authorised by Mr Korda and Mr Mentha, the directors of the Trustee, to affirm this affidavit on behalf of the Trustee.
4. Except where otherwise indicated, I depose to the matters in this affidavit from my own personal knowledge of the facts and circumstances. Where I depose to matters from information and belief, I believe those matters to be true.
5. This affidavit is affirmed in support of an application by the Trustee (**2021 Remuneration Application**) pursuant to section 101 of the *Trusts Act 1973* (Qld) (**Trusts Act**) for authorisation to charge remuneration for its services as Trustee of the MPF for the period between 2 November 2020 and 28 November 2021 (**Relevant Period**).



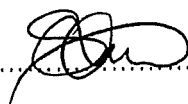
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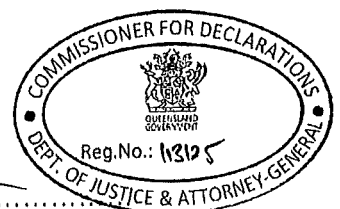


6. The 2021 Remuneration Applications seeks orders authorising payments of the Trustee's remuneration during the Relevant Period totalling \$533,361.00 (excl. GST and disbursements).
7. The Trustee has previously filed the following applications in these proceedings seeking authorisation to be paid remuneration out of the assets of the MPF for earlier periods of time:
- 7.1 Originating Application filed in the Supreme Court of Queensland on 24 November 2015, which application sought the Court's approval for the Trustee's professional fees for the period from 12 January 2015 to 31 October 2015 (**2015 Remuneration Application**).
- 7.2 Interlocutory Application filed on 19 September 2016, which application sought the Court's approval for the Trustee's professional fees for the period from 1 November 2015 to 14 August 2016 (**2016 Remuneration Application**).
- 7.3 Interlocutory Application filed on 6 July 2018, which application sought the Court's approval for the Trustee's professional fees for the period from 15 August 2016 to 27 May 218, and approval for the Trustee's additional remuneration in the period between 2 November 2016 and 27 May 2018 in connection with the sale of the property located 457-459 Lygon Street, Brunswick East, Victoria (**Lygon Street Property**) (**2018 Remuneration Application**).
- 7.4 Interlocutory Application filed on 27 September 2019, which application sought the Court's approval for the Trustee's professional fees for the period from 28 May 2018 to 1 September 2019 (**2019 Remuneration Application**).
- 7.5 Interlocutory Application filed on 8 December 2020, which application sought the Court's approval for the Trustee's professional fees for the period from 2 September 2019 to 1 November 2020 (**2020 Remuneration Application**).
8. The 2021 Remuneration Application, in support of which this affidavit is affirmed, is a separate and distinct application to the above-mentioned applications, and relates to the period following that which was the subject of the 2020 Remuneration Application. Where necessary, for completeness and context, this affidavit summarises work performed historically by the Trustee in respect of the MPF.
9. Throughout this affidavit, I make reference to various documents that are contained in a tabbed and paginated bundle of documents exhibited to this affidavit and marked "Exhibit SC-19" (**Exhibit**).

Affirmed.....



Witness.....



10. Much of the information concerning the background to the 2021 Remuneration Application is set out in affidavits that have been previously sworn in support of the 2015 Remuneration Application, the 2016 Remuneration Application, the 2018 Remuneration Application, the 2019 Remuneration Application, and the 2020 Remuneration Application. To avoid unnecessary duplication, I have read and refer to this material in this affidavit:

10.1 the affidavit of Jarrod Villani filed in this proceeding on 2 December 2015 (**December 2015 Villani Affidavit**) and its exhibits marked "JV-1" (**December 2015 Exhibit**) and "Confidential Exhibit JV-2" (**December 2015 Confidential Exhibit**);

10.2 the affidavit of Jarrod Villani filed in this proceeding on 27 September 2016 (**September 2016 Villani Affidavit**) and its exhibits marked "JV-11" (**September 2016 Exhibit**) and "Confidential Exhibit JV-12" (**September 2016 Confidential Exhibit**);

10.3 the affidavit of Jarrod Villani filed in this proceeding on 6 July 2018 (**July 2018 Villani Affidavit**) and its exhibits marked "JV-13" (**July 2018 Exhibit**) and "Confidential Exhibit JV-14" (**July 2018 Confidential Exhibit**); and

10.4 the affidavit of Jarrod Villani filed in this proceeding on 27 September 2019 (**September 2019 Villani Affidavit**) and its exhibit marked "JV-15" (**September 2019 Exhibit**) and "Confidential Exhibit JV-16" (**September 2019 Confidential Exhibit**); and

10.5 the affidavit of Jarrod Villani filed in this proceeding on 8 December 2020 (**December 2020 Villani Affidavit**) and its exhibit marked "JV-17" (**December 2020 Exhibit**) and "Confidential Exhibit JV-18" (**December 2020 Confidential Exhibit**).

11. Further to this, part of the information concerning the background to the 2021 Remuneration Application arises out of the orders made in the Queensland Supreme Court on 19 March 2021 in relation to facilitating distributions to unitholders (**2021 Directions Orders**).

#### A. BACKGROUND

12. A detailed summary of the background to the creation of the MPF, the appointment of the Trustee, and the basis on which remuneration has previously been paid to the Trustee, is set out at paragraphs 8 to 44 of the December 2015 Villani Affidavit and paragraphs 9 to 40 of the September 2016 Villani Affidavit.

13. Relevantly, for the purposes of this application:

13.1 The MPF was constituted as a unit trust pursuant to a deed dated December 2001 (**Constitution**), which provided that the manager and trustee of the MPF was LM

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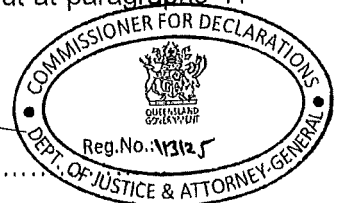


Investment Management Ltd (**LMIM**). A copy of the Constitution is at pages 1 to 24 of the December 2015 Exhibit.

- 13.2 By order of the Supreme Court of Queensland made on 12 April 2013, LMIM was removed as trustee of the MPF, and the Trustee and Calibre Capital Ltd (**Calibre**) were appointed jointly and severally as trustees of the MPF. A copy of these Orders is at pages 146 to 147 of the December 2015 Exhibit.
- 13.3 On 5 January 2015, Calibre retired as trustee pursuant to a written notice issued to the members of the MPF, informing them of its intention to retire as trustee effective on 5 January 2015. A copy of Calibre's notice of intention to retire is at page 152 of the December 2015 Exhibit.
- 13.4 The Trustee has continued to act as sole trustee of the MPF since Calibre retired.
- 13.5 No management or other fees have been paid pursuant to the Constitution since the Trustee and Calibre were appointed on 12 April 2013.
- 13.6 For the period from 12 April 2013 until 11 January 2015, remuneration was paid pursuant to a service agreement entered into between the Trustee, Calibre and KordaMentha Pty Ltd as trustee for the KordaMentha Unit Trust (**Service Agreement**). A copy of the Service Agreement is at pages 171 to 175 of the December 2015 Exhibit.
- 13.7 Following Calibre's retirement in January 2015, the Trustee's remuneration has been authorised pursuant to section 101 of the *Trusts Act*. Relevantly:
- (a) Pursuant to the 2015 Remuneration Application, orders were made in the Queensland Supreme Court on 17 December 2015 authorising payment of \$666,522 (excl. GST) out of the assets of the MPF as the Trustee's remuneration for the period from 12 January 2015 to 31 October 2015. A copy of the Court's orders is at page 3 of the September 2016 Exhibit. Details relating to the 2015 Remuneration Application are set out at paragraphs 45 to 90 of the December 2015 Villani Affidavit.
  - (b) Pursuant to the 2016 Remuneration application, orders were made in the Queensland Supreme Court on 6 October 2016 authorising payment of \$479,227 (excl. GST) out of the assets of the MPF as the Trustee's remuneration for the period from 1 November 2015 to 14 August 2016. A copy of the Court's orders is at page 1 of the July 2018 Exhibit. Details relating to the 2016 Remuneration Application are set out at paragraphs 41 to 73 of the September 2016 Villani Affidavit.

Affirmed.....

Witness.....



- (c) Pursuant to the 2018 Remuneration Application, orders were made in the Queensland Supreme Court on 7 August 2018 authorising:
- (1) payment of \$584,770 (excl. GST) out of the assets of the MPF as the Trustee's remuneration for the period from 15 August 2016 to 27 May 2018; and
  - (2) payment of \$171,296 (excl. GST) out of the assets of the MPF as the Trustee's remuneration for its services in relation to the sale of Lygon Street Property.

A copy of the Court's orders is at pages 1 to 2 of the July 2018 Exhibit. Details relating to the 2018 Remuneration Application are set out at paragraphs 22 to 79 of the July 2018 Villani Affidavit.

- (d) Pursuant to the 2019 Remuneration Application, orders were made in the Queensland Supreme Court on 28 October 2019 authorising payment of \$501,260.10 (incl. GST) out of the assets of the MPF as the Trustee's remuneration for the period from 28 May 2018 to 1 September 2019. A copy of the Court's orders is at page 1 of the September 2019 Exhibit. Details relating to the 2019 Remuneration Application are set out at paragraphs 20 to 76 of the September 2019 Villani Affidavit.
- (e) Pursuant to the 2020 Remuneration Application, orders were made in the Queensland Supreme Court on 19 March 2021 authorising payment of \$280,129.30 (incl. GST) out of the assets of the MPF as the Trustee's remuneration for the period from 2 September 2019 to 1 November 2020 (**2020 Remuneration Orders**). A copy of the reasons for judgment of Justice Williams appears at pages 1 to 8 of the Exhibit.

## B. UPDATES TO INVESTORS

14. Investor updates have periodically been sent to members of the MPF. These investor updates have been set out in detail information at:
- 14.1 paragraphs 20 to 28 of the December 2015 Villani Affidavit;
  - 14.2 paragraphs 10 to 20 of the September 2016 Villani Affidavit;
  - 14.3 paragraphs 14 to 21 of the July 2018 Villani Affidavit;
  - 14.4 paragraphs 16 to 19 of the September 2019 Affidavit; and
  - 14.5 paragraphs 15 to 18 of the December 2020 Villani Affidavit.

Affirmed.....

Witness.....



Copies of the updates are located at pages 153 to 170 of the December 2015 Confidential Exhibit, pages 1 to 142 of the December 2015 Confidential Exhibit, pages 1 to 27 of the September 2016 Confidential Exhibit, pages 1 to 27 of the July 2018 Confidential Exhibit, pages 1 to 41 of the July 2019 Confidential Exhibit, and pages 1 to 14 of the December 2020 Confidential Exhibit.

15. Since the December 2020 Villani Affidavit, the Trustee has issued the following updates to unitholders:

| Update No. | Date of Issue of Update | Location of Update             |
|------------|-------------------------|--------------------------------|
| Update 23  | 10 May 2021             | Pages 9 to 19 of the Exhibit.  |
| Update 24  | 15 December 2021        | Pages 20 to 31 of the Exhibit. |

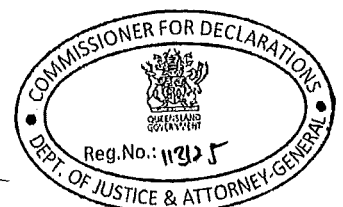
16. The Trustee maintains an email mailing list which contains, to the extent possible, the last-known email address for each of the approximately 4,500 members of the MPF (**Email Mailing List**).
17. Not all of the email addresses on the Email Mailing List work (for instance, because the relevant email address is no longer used by the relevant unitholder). Where the Trustee has been informed or has become aware of a change to a member's contact information, the mailing list has been updated to record that change. As a consequence, there are some unitholders who do not have a valid email address listed in the Email Mailing List.
18. Copies of Update 23 were sent to members of MPF via the email addresses recorded in the Email Mailing List at the time the update was issued.

**C. REMUNERATION SOUGHT WITH RESPECT TO THE MPF**

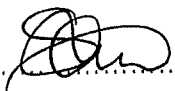
19. A summary of the key work performed by the Trustee during the Relevant Period is at page 32 of the Exhibit.
20. The schedule which is at page 33 of the Exhibit gives an overview of the quantum of remuneration claimed by the Trustee for the Relevant Period. The schedule identifies the following information:
- 20.1 each individual who carried out work during the Relevant Period;
  - 20.2 their position within KordaMentha;
  - 20.3 their hourly charge out rate;

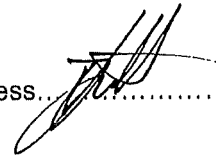
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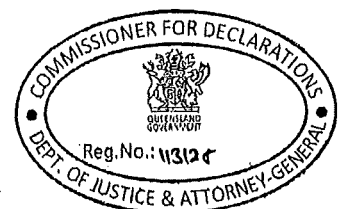
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- 20.4 the hours of work they performed in total, for each of the fortnights during the Relevant Period;
- 20.5 their total hours of work; and
- 20.6 the total remuneration charged in respect of their work.
21. The schedule also contains information about disbursements that were incurred by the Trustee during the Relevant Period, although those disbursements are not the subject of the present application.
22. The staff of KordaMentha and I record time on a daily basis, in six minute units. When recording our time, we also enter a description of the tasks undertaken in an electronic system. Each time entry is allocated to one of the five following categories:
- 22.1 Administration and risk management;
- 22.2 Assets;
- 22.3 Investors;
- 22.4 Investigations; and
- 22.5 Fund trading.
23. While the staff of KordaMentha and I used the above categories to record time, certain items of work could have fallen within more than one of the categories, so that, for example, communicating with investors could have been recorded under either the "Administration and risk management" category or the "Investors" category. However, each task is only recorded once, and the time for carrying out each task has only been recorded once.
24. I have reviewed the narrations for all the work claimed in the present application on a line-by-line basis. From my knowledge of the work carried out and my supervision of the tasks undertaken, I am satisfied that the time recorded for each of the tasks is commensurate with what was required to be undertaken and that the records are accurate.
25. In my view all of the tasks detailed in this affidavit, and the documents in the Exhibit, were necessary for the proper administration of the MPF, in order to maximise realisations, recover funds and distribute those realisations for the benefit of the members.
26. Many of the Partners and staff of KordaMentha, including myself, are members of the Australian Restructuring Insolvency and Turnaround Association (ARITA). We follow the ARITA Code of Professional Practice for Insolvency Practitioners (ARITA Code) in relation to the insolvency appointments we undertake.

Affirmed.. 

Witness.. 



27. The Trustee has adopted the ARITA Code as a guide to the performance of the duties involved in administering the MPF. At pages 178 to 206 of the December 2015 Exhibit is a true and correct copy of sections 14 to 16 of the Third Edition of the ARITA Code of Professional Practice (which came into effect on 1 January 2014) with respect to a practitioner's claim for remuneration.
28. I confirm that the Trustee has followed the ARITA Code in administering the MPF. As to the hourly charge out rates for the Trustee, I can say from my own knowledge and experience that these rates are commensurate with the fees charged by other insolvency practitioners. I also can say from my knowledge that the Trustee has not increased the hourly charge out rates applied in administering the MPF since its appointment on 12 April 2013 and as a result, hourly charge out rates are currently on average approximately 20% lower than KordaMentha's standard hourly charge out rates.
29. Immediately below is a summary of the amounts claimed in respect of work undertaken in each of the five categories identified in paragraph 22 above. At paragraphs 30 to 59 below, I provide more specific details of the work performed by staff of KordaMentha and I during the Relevant Period by reference to those five categories.

| Category                                      | Fees sought to be recovered for period<br>2 November 2020 to 28 November 2021 |
|-----------------------------------------------|-------------------------------------------------------------------------------|
| I. Administration and Risk Management         | \$162,762.50                                                                  |
| II. Assets                                    | \$1,627.50                                                                    |
| III. Investors                                | \$340,315.50                                                                  |
| IV. Fund Trading                              | \$13,848.50                                                                   |
| V. Investigations and Statutory<br>Compliance | \$14,807.00                                                                   |
| <b>TOTAL (excl. GST and disbursements)</b>    | <b>\$533,361.00</b>                                                           |

**I. Administration and Risk Management**

30. The total amount of remuneration sought with respect to this category is \$162,762.50 (excl. GST).
31. A schedule setting out each time entry allocated to this category during the Relevant Period is at pages 34 to 38 of the Exhibit. This schedule includes a description of each task undertaken, the name of the person who performed the task, the date the task was

Affirmed... 

Witness... 



undertaken, the length of time it took, the amount charged and a narration of the task undertaken.

#### Litigation and Legal Matters

32. During the Relevant Period, the Trustee has engaged in significant work:

- 32.1 to prepare the materials in support of an interlocutory application filed on 8 December 2020 pursuant to section 96 of the *Trusts Act* to the effect that the Trustee is justified in making a distribution to unitholders (**2020 Directions Application**)
- 32.2 to facilitate the hearing of the 2020 Remuneration Application in the Queensland Supreme Court on 9 February 2021 (**2021 Remuneration Hearing**);
- 32.3 to facilitate the hearing of the 2020 Directions Application in the Queensland Supreme Court on 9 February and 9 March 2021 (**2021 Directions Hearing**); and
- 32.4 to comply with the 2021 Directions Orders.

#### *2020 Remuneration Application and 2021 Remuneration Hearing*

- 33. This includes work on the 2020 Remuneration Application (that is, the previous application for approval of remuneration for the period from 2 September 2019 to 1 November 2020), including preparing fee schedules, finalising the 2020 Remuneration Application materials, attending to service of the 2020 Remuneration Application materials on unitholders, providing instructions in relation to the 2021 Remuneration Hearing, and preparing for the 2021 Remuneration Hearing.
- 34. Order 1 of the orders made by Williams J in these proceedings on 19 March 2021 (at page 1 of the Exhibit) authorises the payment of the Trustee's costs associated with the 2020 Remuneration Application from the assets of MPF. For completeness, these costs have nevertheless been included in the total for this category.

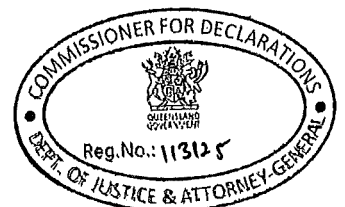
#### *2020 Directions Application and 2021 Directions Hearing*

- 35. During the Relevant Period, the Trustee has engaged in significant work in preparation for making a distribution to unitholders, including:
  - 35.1 liaising with Banton Group in finalising the affidavit material in support of the 2020 Directions Application;
  - 35.2 analysing and considering how to address a final distribution to unitholders pursuant to finalising materials for the 2020 Directions Application;

Affirmed.....



Witness.....



- 35.3 preparing calculations of foreign currency investments and AUD distributions to unitholders in light of the Constitution, and communicating this intention to distribute to unitholders;
- 35.4 attending to service of the 2020 Directions Application materials on unitholders;
- 35.5 engaging in correspondence with unitholders regarding the 2020 Directions Application materials, in correspondence in anticipation of the 2021 Directions Hearing, and in correspondence respect of the 2021 Directions Orders; and
- 35.6 liaising with Banton Group in preparation for the 2021 Directions Hearing, including the preparation of relevant materials and providing instructions in relation to that hearing.

#### *2021 Directions Orders*

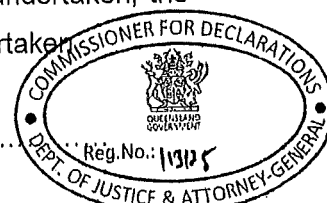
- 36. Pursuant to the 2021 Directions Orders and during the Relevant Period, the Trustee has undertaken work to prepare Update 23 to unitholders and to prepare for distribution to unitholders.
- 37. During the Relevant Period, it became apparent to the Trustee that it would be unable to process some distribution payments due to insufficient or incomplete banking details for particular unitholders (**Unclaimed Monies**). Also, during the relevant period, the Australian Securities and Investments Commission (**ASIC**) informed the Trustee that ASIC could only accept Unclaimed Monies if a court order specifically proscribed this process.
- 38. As a result, the Trustee has undertaken work in analysing and considering how to address Unclaimed Monies under the 2021 Directions Orders, including liaising with the Public Trustee of Queensland and Banton Group.
- 39. The Trustee filed an application for directions in the Supreme Court of Queensland on 10 December 2021 concerning the Unclaimed Monies, and the relevant supporting material. The Trustee intends for this application to be heard together with the application for directions.

## **II. Assets**

- 40. The total amount of remuneration sought with respect to this category is \$1,627.50 (excl. GST).
- 41. A schedule setting out each time entry allocated to this category during the Relevant Period is at page 39 of the Exhibit. This schedule includes a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged, and a narration of the task undertaken.

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Witness.....



*Proceedings No. QLD 596/2014 Federal Court of Australia Proceedings*

42. Proceedings were commenced against the former managing director of LMIM, Mr. Peter Drake. Mr. Drake was subsequently declared bankrupt and proceedings were commenced by ASIC against Mr. Drake (**Drake Proceedings**).
43. Judgment was handed down in relation to the Drake Proceedings and the Trustee has since assisted the Trustee of Bankrupt Estate in finalising the estate of the Mr. Drake. The Trustee has provided \$27,403.00 in indemnity funding.
44. The Trustee is a secured creditor in the Bankrupt Estate of Peter Charles Drake and has been providing funding to assist in selling the assets and obtaining a recovery.
45. During the Relevant Period, the Trustee has continued to:
- 45.1 oversee the finalisation of the administrative bankrupt estate of Peter Charles Drake by dealing with the last remaining distribution flowing from that estate; and
- 45.2 engage in ongoing correspondence with the Trustee of the Bankrupt Estate of Peter Charles Drake.

**III. Investors**

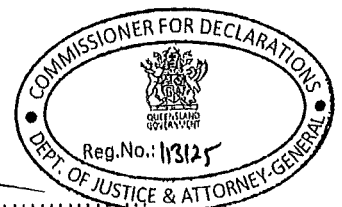
46. The total amount of remuneration sought with respect to this category is \$340,315.50 (excl. GST).
47. A schedule setting out each time entry allocated to this category during the Relevant Period is at pages 40 to 46 of the Exhibit. This schedule includes a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged, and a narration of the task undertaken.

*General Tasks*

48. As noted in paragraph 16 above, there are approximately 4,500 members of the MPF. As such, during the Relevant Period, staff of KordaMentha and I have been required to answer an extensive number of investor queries, and issue investor communications to keep investors updated on the process of winding up the MPF, including on the 2020 Remuneration and Directions Application, and the 2021 Remuneration and Directions Hearing.
49. During the Relevant Period, the specific tasks staff of KordaMentha and I have undertaken in this category include:

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Witness.....



49.1 responding to investor queries in the "LM Inbox", which is a long-standing email account established as a channel for investor enquiries; and

49.2 preparing and drafting materials for distribution to investors.

*2021 Directions Orders and Preparation for Distribution*

50. As set out in paragraphs 32 to 35 above during the Relevant Period, the Trustee has undertaken a significant amount of work to prepare for distribution to investors. Tasks undertaken in the Relevant Period under this category of work include:

50.1 preparing and drafting correspondence to be issued to investors in respect of updating bank account and contact details in readiness for the distribution that the Trustee will be making;

50.2 ongoing review of the investor register and distribution bank details, and occasionally adding investor details to the Trustee's email distribution list where required;

50.3 correspondence with Link Market Services regarding the management of the unitholder register and setting up the unitholder register update process;

50.4 reviewing and responding to direct enquiries from unitholders regarding the register update and their specific circumstances;

50.5 correspondence with unitholders whose update requests have been unsuccessful due to errors or insufficient supporting documentation;

50.6 ongoing review of unitholder documents, as required, and suitability of these documents to the Link Market Services process; and

50.7 correspondence with OFX, the provider who will be making the payments to the unitholders, regarding payments to investors and arrangements for overseas investors regarding processing of international funds transfers.

51. There are a number of matters to be dealt with in preparing for the distribution payment to unitholders, these include but are not limited to the following:

51.1 administering the transfer of unit holdings to beneficiaries and/or executors of deceased estates, including ensuring that appropriate supporting documentation is provided to validate the transfer;

51.2 administering the transfer of unit holdings or otherwise update bank account details upon change of trustee for unitholder trusts, including ensuring that appropriate supporting documentation is provided to validate amendment;

Affirmed.....

Witness.....



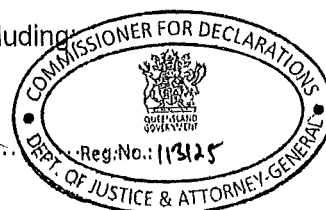
- 51.3 administering the transfer of unit holdings or otherwise update bank account details for corporate unitholders who have changed their name or have been the subject of merger or acquisition activity since the appointment of the Trustee;
- 51.4 dealing with corporate unitholders which have been wound up or are otherwise subject to a form of external administration;
- 51.5 correspondence with the United Kingdom Financial Services Compensation Scheme (FSCS) and specific unitholders who have received compensation in respect to their investments in the MPF and where the FSCS is then entitled to receive their distribution payment;
- 51.6 correspondence with various 'indirect' unitholders who have invested through an intermediary and are seeking information regarding the distribution payment or to have the distribution paid to them directly;
- 51.7 correspondence with various unitholders regarding difficulties in obtaining sufficient supporting documentation and in delivering supporting documentation to the Trustee due to COVID-19 travel restrictions and postal delays;
- 51.8 ensuring that correct information is obtained and stored for international funds transfer to multiple jurisdictions with differing requirements and local practices.

#### IV. Fund Trading

- 52. The total amount of remuneration sought with respect to this category is \$13,848.50 (excl. GST).
- 53. A schedule setting out each time entry allocated to this category during the Relevant Period is at pages 47 to 48 of the Exhibit. This schedule includes a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged, and a narration of the task undertaken.
- 54. The remuneration claimed in this application includes work that staff of KordaMentha and I undertook in respect of the administration of the MPF and carrying out the winding up of the MPF, which I would describe as 'fund trading'. In a general sense, time charged to this category relates to work undertaken in administering the trading activities of the MPF and managing its cashflows. The work captured by this category is necessary for the MPF to continue operating during the period of its winding up.
- 55. More specifically, this category includes time spent on tasks associated with the management of the accounts of the MPF during the Relevant Period, including:

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- 55.1 reviewing and monitoring current and forecast cash flows;
- 55.2 cash reconciliation; and
- 55.3 considering accounts payable.

**V. Investigations and Statutory Compliance**

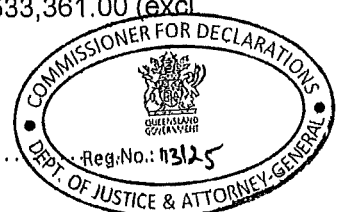
- 56. The total amount of remuneration sought with respect to this category is \$14,807.00 (excl. GST).
- 57. A schedule setting out each time entry allocated to this category during the Relevant Period is at pages 49 to 50 of the Exhibit. This schedule includes a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
- 58. This category has been used to a limited extent to record time spent in reviewing the MPF's books and records. However, most time recorded in this category relates to preparing and lodging income tax returns and Business Activity Statement (**BAS**) returns. BAS returns are prepared on a monthly basis, and the fees charged to this category accordingly include work undertaken to prepare and lodge the MPF's BAS statements for each month from September 2020 to September 2021 inclusive.
- 59. This category has also been used to record time spent on general accounting tasks connected with the MPF, including preparation of annual financial statements, ongoing tax accounting, processing payments and receipts, attending to bank account reconciliations, and processing receipts and payments into our accounting system, Insol, in accordance with the Trustee's statutory obligations under the *Corporations Act 2001* (Cth).

**D. STATUS OF THE ADMINISTRATION OF THE MPF**

- 60. Given the complexities involved in the administration of the MPF, in particular the calculation of the final distribution, the 2020 Directions Application and the 2021 Directions Hearing, and the length of the period for which fees are sought to be recovered, I believe the remuneration sought of \$533,361.00 (excl. GST) for professional fees (across all five categories) represents a fair and reasonable claim for remuneration. I also believe that the work undertaken to which the remuneration relates was necessary for the proper conduct of the administration and winding up of the MPF.
- 61. I respectfully request that this Honourable Court make orders authorising payments of the Trustee's general remuneration for the Relevant Period in the amount of \$533,361.00 (excl. GST) out of the assets of the MPF.

Affirmed.....

Witness.....



62. Whilst this is the sixth application the Trustee has made to the Court to recover its professional fees, as the winding up of the MPF is ongoing there will likely be one more application for remuneration after the 2021 Directions Application has been heard and a distribution made to unitholders.
63. The Trustee filed the Directions Application 2021 on 10 December 2021 in the Supreme Court of Queensland and is in the process of receiving directions from the Court (as detailed at paragraphs 36 to 39 above), to make a final distribution from the MPF of Unclaimed Monies to the Public Trustee of Queensland. On the basis of what is presently known, I estimate that it will take at least another 6 months to complete the winding up of MPF.

**E. SUBSTITUTED SERVICE ORDERS**

64. The Originating Application filed on 24 November 2015 sought orders from the Court that the materials in support of the application be permitted to be served by way of substituted service. Specifically, the Court ordered that the application documents would be deemed to have been effectively served on the MPF's approximately 4,500 members, five days after the Applicant:
- 64.1 made the application materials available online on the page dedicated to the MPF on the Trustee's website; and
- 64.2 either sent an email to all members of the MPF at their last known email addresses notifying them of the Court documents and their availability on KordaMentha's website, or where an undeliverable message was received and a postal address held for that member, sent a copy of the notice by prepaid post (**Substituted Service Orders**).

A copy of the Substituted Service orders is at pages 1 to 2 of the September 2016 Exhibit.

65. The Substituted Service Orders included a provision permitting any further applications the Trustee might file for approval of its remuneration to be served by way of substituted service. At the hearing of the primary application on 17 December 2015, the Court varied paragraph 1(d) of the Substituted Service Orders, to permit substituted service of "any further applications and supporting affidavits" the Trustee might file for approval of its remuneration. A copy of the orders made on 17 December 2015 varying the Substituted Service Orders is at page 3 of the September 2016 Exhibit.
66. In the present application, the Trustee relies on the Substituted Service Orders (as varied) permitting substituted service of any further applications made by the Trustee for approval of its remuneration in the manner set out therein.

Affirmed.....

Witness.....



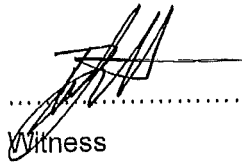
Affirmed by STACEY CLISBY

On 17 December 2021

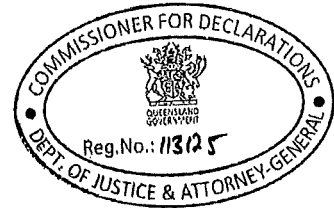
At Brisbane, Queensland, in the presence of:



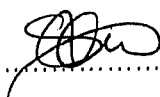
Signed



Witness



Affirmed



Witness



